IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL W.P.NO.236 OF 2007

Rajesh Laxmichand Bhatia ..Petitioner
Vs.
Ad.Vista Mumbai Pvt.Ltd.
& Ors. ..Respondents

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Mr.Chimade with Ramesh Jain & Kusum Jain Advocate for Petitioner
Mr.S.P.Shinde A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : FEBRUARY 14, 2007

P.C.

1. Heard the learned advocate for the petitioner-original accused and the learned A.P.P. for the State.

2. The petitioner-accused is facing prosecution under section 138 of Negotiable Instruments Act. The plea of the accused also came to be recorded and the accused pleaded not guilty. Thereafter, the complainant moved an application to issue summons to the bank witness i.e. the Senior Manager of HSBC Bank, Vile Parle Branch to produce the cheques mentioned in the application and to give evidence. The said application came to be allowed by the learned Magistrate. Being aggrieved by the said order, the petitioner preferred a

revision before the Sessions Court. The said revision came to be dismissed by order dated 15.9.2006. Being aggrieved by this order, the present petition has been preferred.

3. The learned advocate for the petitioner has submitted that it is mandatory that the complainant should be examined first and thereafter, the other witnesses can be examined. He has submitted that complainant has not examined himself and before the complainant examined himself, he has preferred the application to issue summons to the bank witness.

4. Section 145(1) of the Negotiable Instruments Act, provides that "in cases under Section 138 of N.I.Act, the evidence of the complainant may be given by him on affidavit and sub-clause (2) of this section gives discretion to the Court to examine any person giving evidence on affidavit as to the facts contained therein". After going through the provisions of the Act, it is clear that the prosecution may examine any individual witness to prove its case. It is true that ordinarily the complainant should be examined first and thereafter, the other witnesses ought to be

examined. In the facts of the present case it is seen that it is the complainant's case that the evidence of the bank witness was very much necessary to prove the case. Hence, he has preferred the detailed application to issue summons to the Manager of HSBC Bank, Vile Parle Branch. The learned Magistrate after hearing both sides, allowed the said application. I have perused the order of the learned Magistrate as well as the learned Sessions Judge. In my view, mere fact that the bank witness was to be examined before the complainant, cannot be a ground to say that the said order is defective. The relevancy of the documents which would be produced by the bank witness, would be considered at the time of trial. If the said documents or evidence is not material or is not relevant for the decision of the case, that aspect would be considered by the trial Court. At this stage, it cannot be said that the evidence of the bank witness is not relevant. In this view of the matter, I find that no case is made out for interference with the orders passed by the Courts below.

5. Writ Petition is disposed of.

[Smt. V.K.Tahilramani, J.]